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Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUND SURGICAL CENTER
P.S.,

Plaintiff,

v.

AETNA LIFE INSURANCE COMPANY,
AETNA, INC., AMTRAK HEALTH CARE
PLAN, ANCHORAGE SCHOOL
DISTRICT ACTIVE EMPLOYEE OPEN
CHOICE PPO MEDICAL PLAN,
BECHTEL JACOBS COMPANY LLC
HEALTH AND WELFARE PLAN, STATE
OF ALASKA ALASKACARE
EMPLOYEE HEALTH PLAN, BANK OF
AMERICA HEALTH CARE PLAN,
NORDSTROM, INC. CLASSIC PLAN,
STARBUCKS HEALTH CARE PLAN,
COSTCO WHOLESALE HEALTH PLAN,
SOUND HEALTH AND WELLNESS
TRUST PLAN, WESTCO HEALTH
PLAN, LOCKHEED MARTIN
CORPORATION TOTAL HEALTH
PLAN, and ADOBE SYSTEMS, INC.
GROUP WELFARE PLAN

Defendant.

No. 2:17-cv-01190

**STIPULATED MOTION AND
~~PROPOSED~~ ORDER TO
CONTINUE TRIAL DATE AND
AMEND CASE SCHEDULE**

NOTED ON MOTION CALENDAR:

August 7, 2018

I. STIPULATION

The parties to this action, by and through their undersigned counsel of record, hereby jointly request an extension of the case schedule and trial date by six months. The parties have

STIPULATED MOTION AND [PROPOSED] ORDER TO
CONTINUE TRIAL DATE AND AMEND CASE SCHEDULE - 1
Case No. No. 2:17-cv-01190

**GORDON REES SCULLY
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1 good cause due to exceptional circumstances to request relief from the current case schedule
2 and trial deadline as set forth below:

3 1. Plaintiff Puget Sound Surgical Center filed this action against Aetna Life
4 Insurance Company and twelve named health plans on August 7, 2017. Plaintiff's Complaint
5 seeks additional payment for medical services rendered in connection with bariatric weight
6 loss surgery, among other procedures. (Dkt. 1.)

7 2. On December 12, 2017, the Court issued a Minute Order Setting Trial Dates
8 and Related Dates (Dkt. 57) (hereinafter "Minute Order"). Pursuant to the Court's December
9 12, 2017 Minute Order, trial is currently set for **March 18, 2019**.

10 3. Due to the large number of parties and to promote efficiency and avoid
11 piecemeal filings, the parties agreed that the responsive pleadings would be filed 21 days after
12 service of all of the defendants in this case. (Dkt. 25.) Plaintiff had difficulty serving Wesco
13 Health Plan and ultimately was not able to effectuate service.

14 4. During a period of months prior to 2018, Puget Sound underwent two separate
15 management changes. During the first such management change, Puget Sound's outside
16 counsel was unable to communicate effectively with his client and could not produce the
17 documents Puget Sound did until the second management change. Declaration of Robert J.
18 Axelrod in Support of Motion to Continue Trial Date and Amend Case Schedule.

19 5. Beginning on March 27, 2018 and continuing through May 2, 2018, pursuant to
20 the Joint Status Report and Discovery Plan (Dkt. 44), Plaintiff produced claim spreadsheets
21 and documents (CMS-1500 and Explanation of Benefit forms) identifying the underlying
22 claims for health benefits at issue in this matter. The materials produced by Plaintiff identify
23 688 underlying claims at issue involving 65 different health plans, some of which were not
24 identified in the complaint. Plaintiff produced 1,165 pages of documents. More specifically:

- 25 • On March 27, 2018, Plaintiff identified claims involving the Sound
26 Health and Wellness plan;

- 1 • on April 5, 2018, Plaintiff identified additional claims involving the
2 Starbucks Corporation, Costco, Concord Transportation, Inc., Adobe,
3 24 Hours Nurseline, AHI Insurance, AlaskaCare, Amtrak, Anthony A.
4 Santorsola DDS, and Bechtel plans;
- 5 • on April 12, 2018, Plaintiff identified additional claims involving the 1
6 Source, 24 Hours Nurseline, Concord Transportation, Inc., Adobe,
7 Anchorage School District, AHI Insurance, AlaskaCare, Avaya, Inc.,
8 Anthony A. Santorsola DDS, Daymond Worldwide, Inc., Girl Scouts of
9 Alaska, Senior Operations LLC, State of Alaska, United Parcel Service,
10 Wesco, ASEA AFSME Local 52 Health Benefits, Accenture LLP,
11 Amgen Preferred Choice, Employee Painters Choice, and Icon Clinical
12 Research, Inc;
- 13 • on April 17, 2018, Plaintiff identified additional claims involving the
14 Allstate Medical Savings, Builders Exchange of Washington, Inc.,
15 Carpenter Trust & Security, Columbia Athletic Clubs, Corstone
16 Contractors LLC, E Line Ventures LLC, Royal Life Centers LLC,
17 Seattle Arc Plumbing & Pipefitting, Spectralux Corporation, Symphony
18 Teleca Services, and Viant Network plans;
- 19 • on April 27, 2018, Plaintiff identified claims involving the City of
20 Seattle, Fairbanks North Star Borough School District, LDM
21 Worldwide Corporation, MHBP, Navigator Group, Inc., Nordstrom
22 Classic Plan, Nordstrom, Inc., Northwest School for Hearing Impaired
23 Children, and Nexious Solutions plans;
- 24 • on May 2, 2018, Plaintiff identified claims involving the Quest
25 Diagnostics, Docusign, Inc., Bank of America, UPS Health Savings,
26 Roks America Inc. Insurance, Northwest Insulation Workers Welfare
27 Trust, and MCA plans; and

1 • on June 4, 2018, Plaintiff's counsel advised Defense counsel that
2 Plaintiff had completed its document production and disclosure of the
3 underlying claims at issue.

4 6. Upon receipt of Plaintiff's claim spreadsheets, Aetna promptly began the
5 process of gathering the applicable health benefit plan documents and claim file materials for
6 the 688 underlying claims at issue in this action.

7 7. On June 5, 2018, Plaintiff filed a Status Report stating that it had finalized the
8 service of process in this matter. (Dkt. 67.)

9 8. On June 19, 2018, the Court granted a Stipulated Joint Motion to Set Briefing
10 Schedule. Pursuant to the Court's June 19, 2018 Order, Defendants' deadline to answer,
11 respond, or move with respect to the Complaint was July 5, 2018. (Dkt. 69.) The Sound
12 Health and Wellness Plan filed a motion to dismiss the complaint on July 5, 2018 and the
13 remaining defendants which had been served filed an answer on the same day. (Dkt. 71.) The
14 motion to dismiss is currently being briefed.

15 9. Aetna is still in the process of gathering the applicable health benefit plan
16 documents and claim file materials for the 688 underlying claims at issue in this action.
17 Declaration of Lisa Adinolfi in Support of Stipulated Motion to Continue Trial Date and
18 Amend Case Schedule, ¶ 3. Due to the extremely large number of underlying claims, Aetna
19 estimates that this document-gathering process will take an additional three to four months,
20 and will not be complete until October 2018. *Id.* The document gathering process is labor
21 intensive and time consuming. Aetna estimates the time required to identify and gather the
22 applicable documents for each claim to be, on average, 10 to 20 minutes. *Id.* This means it
23 will take between 6,688 minutes (approximately 112 employee hours) and 13,376 minutes
24 (approximately 224 employee hours) to collect the claim documents. *Id.* Aetna anticipates the
25 claim documents for the 688 claims at issue will total tens of thousands of pages. *Id.*

26 10. The claim documents are likely to include HIPAA-protected data of patients
27 who are not parties to this action and who lack any connection to the claims at issue. Thus,

28 STIPULATED MOTION AND [PROPOSED] ORDER TO
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Case No. No. 2:17-cv-01190

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1 after the documents have been compiled, Aetna must redact the files to safeguard those
2 patients' HIPAA-protected data. *Id.*, ¶ 4. Aetna estimates the process of identifying and
3 redacting HIPAA-protected information will take an additional 10 to 20 minutes for each
4 underlying claim. *Id.* This means that it will take another 112-224 employee hours to make
5 sure that Aetna has removed from the documents all of the private information and personal
6 health information of individuals who have no connection to this lawsuit.

7 11. Once the applicable claim documents have been compiled and redacted,
8 Aetna's counsel will need to review the documentation and prepare it for production to
9 Plaintiff. Declaration of Matthew G. Kleiner in Support of Stipulated Motion to Continue
10 Trial Date and Amend Case Schedule, ¶ 2. This necessarily includes review for relevance and
11 privilege. Depending on the number of documents collected by Aetna, this process is
12 anticipated to take between 2-3 weeks. *Id.*

13 12. In addition, defense counsel John Shely and Courtney Glaser of Hunton
14 Andrews Kurth currently have multiple trial settings in May and June 2019, which, if remain
15 unchanged, would preclude them from attending trial in this matter during those months. *Id.*,
16 ¶ 3.

17 13. The Parties hereby stipulate and jointly request that this Court enter an Order
18 continuing the trial date currently set for March 18, 2019 by six months days to **September**
19 **16, 2019**, or a date thereafter convenient to the Court, and amending the case schedule set
20 forth in the Court's December 12, 2017 Minute Order to continue certain related pre-trial
21 deadlines by six months in accordance with the new trial date.

22 14. Under these unique circumstances, where a large number of claims and plans
23 are at issue that need to be located, reviewed, processed, and produced to Plaintiff (including
24 dozens of plans and hundreds of claims not referenced in the Complaint), and where the
25 parties need to have sufficient time to review the documents, good cause exists for the parties'
26 request. The parties have made this request in a timely manner as the response to the
27 Complaint was not due until July 5, 2018. Under the current case schedule, there is then a

1 relatively short period of time between July 5, 2018, and the disclosure of expert testimony on
2 September 19, 2018, and motions related to discovery to be filed no later than October 19,
3 2018. (Dkt. 57). While Aetna is diligently gathering and processing the documents, Aetna
4 estimates that the gathering of all the necessary documents will not be completed until October
5 2018. Based on this timeline, the parties will not be able to timely designate experts, file
6 discovery motions, or complete discovery by the current deadlines. (Dkt. 69.)

7 15. For the foregoing reasons, the parties respectfully move the Court for an Order
8 continuing the trial in this matter by six months to September 16, 2019, or a date thereafter
9 convenient to the Court, and amending the case schedule to continue the related pre-trial
10 deadlines by six months in accordance with the new trial date.

11 Respectfully submitted this 7th day of August, 2018.

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Aetna Life Insurance Company; Aetna, Inc.;
Bechtel Jacobs Company LLC Health and
Welfare Plan; Amtrak Health Care Plan;

29 STIPULATED MOTION AND [PROPOSED] ORDER TO
30 CONTINUE TRIAL DATE AND AMEND CASE SCHEDULE - 7
31 Case No. No. 2:17-cv-01190

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1 **Bank of America Health Care Plan;**
2 **Nordstrom, Inc. Classic Plan; Starbucks**
3 **Health Care Plan; Costco Wholesale Health**
4 **Plan**

5 **II. ORDER**

6 The Court hereby finds that good cause exists to grant the requested relief and that an
7 extension of the case schedule is necessary due to the exceptional circumstances of reviewing
8 and processing documents related to the 688 claims at issue. The trial date is hereby extended
9 by six months to September 16, 2019, and the case schedule set forth in the Court's December
10 12, 2017 Minute Order Setting Trial Dates and Related Dates (Dkt. 57) is amended as follows:

11 JURY TRIAL DATE	September 16, 2019
12 Length of Trial	5 days
13 Deadline for joining additional parties	January 9, 2018
14 Deadline for initial disclosures from parties who have 15 not already made such disclosures	September 30, 2018
16 Deadline for amending pleadings	March 20, 2019
17 Disclosure of expert testimony under FRC 26(a)(2)	March 20, 2019
18 All motions related to discovery must be filed by (see LCR 7(d))	April 19, 2019
19 Discovery completed by	April 1, 2019
20 All dispositive motions and motions challenging expert 21 witness testimony must be filed by (see LCR 7(d))	June 18, 2019
22 Settlement conference held no later than	July 18, 2019
23 All motions in limine must be filed by	July 29, 2019
24 All motions in limine shall be filed as one motion.	
25 Agreed pretrial order due	August 19, 2019
26 Deposition Designations must be submitted to the court (not filed on CM/ECF) by: 27 (see LCR 32(e))	August 21, 2019

28 STIPULATED MOTION AND [PROPOSED] ORDER TO
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Case No. No. 2:17-cv-01190

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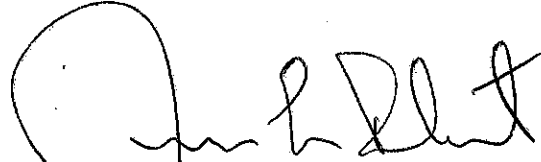
1 Pretrial conference to be held at 2:30 PM on
2 Trial briefs, proposed voir dire, jury instructions by
3 Motions in limine raised in trial briefs will not be
4 considered.

August 26, 2019

September 9, 2019

5 **IT IS SO ORDERED.**

6 DATED: 14 August, 2018.



8 Honorable James L. Robart
9 United States District Court Judge

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day, I electronically filed a true and accurate copy of the document to which this declaration is affixed with the Clerk of the Court using the CM/ECF System, which will electronically mail notice to:

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Dated this 7th day of August, 2018, at Seattle, Washington.

/s/ Karen Hansen

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